

- (1) Whether claimant provided the statutorily required notice;

- (2) Whether the claimant suffered accidental injury arising out of and in the course of employment with the respondent.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments of the parties the Appeals Board finds:

- (1) Claimant did not give respondent notice of her injury within the ten (10) days as required by K.S.A. 44-520 and has not shown just cause for failing to do so.

Claimant testified that she suffered injury to her back on January 9 or 10, 1994 and again on January 24, 1994. She testified that the injury occurred while moving central processing units and monitors from personal computers. Claimant gave somewhat general testimony that she had told Tracy Shepard, owner and president of PC Smart, she hurt her back lifting computers. She indicated she told Ms. Shepard about problems with her back both before January and after the alleged injuries. Respondent provides a specific denial of that testimony. Ms. Shepard testified that claimant did not tell her that she injured her back in the course of her employment. She testified that she had talked to claimant on February 15 about some employment issues and claimant did not mention that she had been to the doctor the day before. Ms. Shepard also testified that her first notice of the injury was when she received a letter from claimant's attorney on February 18, 1994. The Appeals Board finds the respondent's evidence is more persuasive in this issue and accordingly finds that claimant did not give notice as required. The record contains no evidence suggesting just cause for the failure.

- (2) The Appeals Board finds claimant has not established that she suffered an accidental injury arising out of and in the course of her employment with respondent.

Claimant has testified to two separate injuries on two separate dates, both while moving computer components. She testified that on one occasion Mr. Roger Wiggett observed her moving the computers. He observed her stop and put the computer down and pick it back up. She thought he should have been aware she was having problems moving the computer. She testified that on the other occasion a Ms. Janice Vogl observed similar behavior. Both Mr. Wiggett and Ms. Vogl provide contradicting testimony. Mr. Wiggett testified that he did not specifically remember seeing claimant ever move computers. He did not see her carry or move equipment. Ms. Vogl indicates that she was not aware that claimant moved any computer equipment. She did recall claimant pushing a chair with a computer on it. The Appeals Board finds the claimant failed to meet her burden to establish that she did suffer accidental injury in the course of her employment.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Preliminary Order of Administrative Law Judge Shannon S. Krysl, dated May 7, 1994, should be reversed. Claimant's request for preliminary benefits should be, and the same is hereby, denied.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December, 1994.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: James B. Zongker, Attorney at Law, Wichita, KS  
William L. Townsley, III, Attorney at Law, Wichita, KS  
Shannon S. Krysl, Administrative Law Judge  
George Gomez, Director